



**Warner Properties Communications**  
6701 Penn Ave. S., Suite 201  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:

Exclusive Service Contracts for  
Provision of Video Services in Multiple  
Dwelling Units and Other Real Estate  
Developments

Docket No. 07-51

**COMMENTS OF WARNER PROPERTIES, LLC AND WARNER PROPERTIES  
COMMUNICATIONS, LLC**

These comments are submitted on behalf of Warner Properties, LLC ("WP") and Warner Properties Communications, LLC ("WPC") to comment upon the Federal Communications Commission's ("FCC") March 22, 2007 Notice of Proposed Rulemaking regarding the use of exclusive contracts for the provision of video services to multiple dwelling units or other real estate developments ("Notice"). WP owns and manages eleven multiple dwelling units ("MDUs") in the Minneapolis/St. Paul area and has done so since 1926. More recently, WPC was formed to own and operate communications equipment. These two entities provide a unique

perspective to the Notice, as it is that of a property owner as well as a potential provider of communications equipment. As such, WP and WPC have a strong interest in the proposed regulations and are in a good position to comment on the Notice.

## **1. Existing Exclusive Contracts**

In light of the FCC's goals of consumer choice and video competition, WP and WPC believe that existing exclusive contracts between MDU owners and video service providers should be abrogated and, in the future, exclusive contracts should be prohibited. WP and WPC strongly believe that exclusive contracts impede access by competitive providers into the MDU market. Property owners, such as WP, could offer their tenants more cable choices if they were not prohibited from doing so because of often perpetual existing exclusive contracts. In addition to the barrier to entry that exclusive contracts create, WP and WPC agree with Verizon and Manatee County that providers with exclusive contracts have little incentive to properly upgrade their equipment, thereby negatively impacting consumers. To create an incentive for providers to maintain adequate equipment and to further competition, exclusive contracts should be prohibited and those in existence should be nullified; at the very least, they should be of limited duration.

## **2. Open Access and Sharing of Expenses**

WP and WPC wish to respond to the FCC's request for specific rules that ensure competitive video access to MDUs. As presented in the Minnesota statutes

(see Exhibit A), Minnesota law creates a balance between consumers' choice of provider and providers' need for adequate compensation. Specifically, Minn. Stat. § 238.24 provides that a property owner is only obligated to provide to a cable system installer access to the property owner's MDU when the equipment installed has capacity to give access to other providers of television programming or cable communications services. The statute's purpose is clearly stated: allowing consumers the option of alternative providers. If residents choose to use alternative providers, the statute requires the alternative provider to reimburse the original cable system installer on a pro rata basis. Though commenters opposing contract regulation suggest that exclusive contracts are necessary to recover costs for installing facilities, the Minnesota model addresses this issue while furthering consumer choice; therefore, WP and WPC urge the FCC to adopt this state model on the federal level.

### **3. Abandoned Cable**

To address the FCC's inquiry about what constitutes "unfair methods of competition" under Section 628(b) of the Communications Act of 1934, WP and WPC point to a number of practices they have encountered, such as cable providers refusing to give other service providers the right to use abandoned cable unless some sort of payment is offered. WP and WPC have also observed disturbing practices in the context of Minneapolis Public Housing (MPH). Specifically, large corporations have tried to keep abandoned cable hidden and, when the cable was

discovered, only allowed MPH to use the cable if MPH would agree not to allow alternative video providers to do so. These types of practices are specifically addressed in Section 628(b), which prohibits companies from “hinder[ing] significantly or prevent[ing] any multichannel video programming distributor from providing satellite cable programming...to subscribers or consumers.” Cable providers should be encouraged to use abandoned cable to further the federal goals of consumer choice and competition. Instead, providers are being discouraged from taking advantage of unused cable. In the context of MPH, the type of unfair practice described is negatively impacting a large number of low income status individuals who cannot afford to be overcharged. In light of the vast number of people who are not receiving sufficient choices or competitive pricing, the FCC should explicitly prohibit these types of practices as they are clearly unfair methods of competition.

## **CONCLUSION**

Warner Properties, LLC and Warner Properties Communications, LLC appreciate this opportunity to provide these comments and look forward to continuing participation in the discussions and proceedings of the FCC on the regulation of exclusive video services contracts.

Dated: June 18, 2007.

Respectfully submitted,

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Ted E. Warner  
General Manager  
Warner Properties, LLC  
Warner Properties Communications, LLC

## **EXHIBIT A**

M.S.A. § 238.23

Minnesota Statutes Annotated

Telecommunications (Ch. 237, 238)  
Chapter 238. Cable Communications  
**238.23. Access required**

**Subdivision 1. Provision of access.** A property owner or other person controlling access shall provide a cable communications system access to the property owner's multiple dwelling complex. The access provided must be perpetual and freely

transferable by one person operating a cable communications system to another. A cable communications system granted access, and its successors in interest, must fully comply with sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27.

**Subd. 2. Resident's rights.** The intent of sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 is to give residents the freedom to choose among competing cable communications services and nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 requires residents to hook up or subscribe to any services offered by any cable communications system or alternative provider of cable communications services.

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M.S.A. § 238.24

Minnesota Statutes Annotated

Telecommunications (Ch. 237, 238)  
Chapter 238. Cable Communications  
**238.24. Conditions for access**

**Subdivision 1. In general.** An installation of cable communications facilities under sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 must conform to reasonable conditions necessary to protect the safety, functioning, and aesthetic appearance of the premises, and the convenience and well-being of the property owner and residents.

**Subd. 2. Owner approval.** A property owner may require from a cable communications system before installation or modification of cable communications facilities, diagrams showing plans for the placement and securing of the facilities. A property owner may approve or disapprove installation plans. Approval of plans may not be unreasonably withheld.

**Subd. 3. Installation; bond.** The facilities must be installed in an expeditious and workmanlike manner, must comply with applicable codes, and must be installed parallel to utility lines when economically feasible. A property owner may require a person operating a cable communications system to post a bond or equivalent

security in an amount not exceeding the estimated cost of installation of the cable communications facilities on the premises. Any bond filed by a cable communications system with a municipality that would provide coverage to the property owner as provided under this subdivision fulfills the requirements of this subdivision.

**Subd. 4. Indemnify for damage.** A person operating a cable communications system shall indemnify a property owner for damage caused by the company in the installation, operation, maintenance, or removal of its facilities.

**Subd. 5. Relocation.** A property owner may require a cable communications system, after reasonable written notice, to promptly relocate cable communications facilities on or within the premises of the property owner for the purpose of rehabilitation, redecoration, or necessary maintenance of the premises by the property owner.

**Subd. 6. Master antenna television system.** Nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 precludes a property owner from entering into an agreement for use of a master antenna television system by a person operating a cable communications system or other television communications service.

**Subd. 7. Cost allocated.** A cable communications system shall bear the entire cost of the installation, operation, maintenance, and removal of a cable communications facility within the initial franchise service area.

**Subd. 8. Compensation for access.** (a) A cable communications system shall:

(1) compensate the property owner for the diminution in fair market value of the premises resulting directly from the installation of the nonexclusive cable communications system; and

(2) reimburse the property owner in an amount not to exceed \$100 for premises containing less than ten dwelling units, and \$200 for other premises, for actual costs incurred by the property owner with respect to the professional review of the plans and drawings regarding installation or modification of the cable communications system, associated contractual materials, and other documentation.

(b) With respect to paragraph (a), clause (1), any party appearing in a proceeding as provided under section 238.25 may introduce evidence of damages, if any, and special benefits, if any, to the property occurring by reason of the installation of the cable communications system.

**Subd. 9. Not retroactive.** Nothing in sections 238.02, subdivisions 1a, 1c, 1d, 21a, 28a, 29a, 31a, and 31d, and 238.22 to 238.27 affects the validity of an agreement effective before June 15, 1983 between a property owner, a person operating a cable communications system, or any other person providing cable communications services on or within the premises of the property owner.

**Subd. 10. Channel capacity.** (a) A property owner must provide access to a franchised person operating a cable communications system, as required under section 238.23, only if that cable system installs equipment with channel capacity sufficient to provide access to other providers of television programming or cable communications services so that residents or association members have a choice of alternative providers of those services. If the equipment is installed, the cable communications system shall allow alternative providers to use the equipment. If some of the residents or association members choose to subscribe to the services of an alternative provider, the cable system that installed the equipment must be reimbursed by the other providers for the cost of equipment and installation on the property on a pro rata basis that reflects the number of subscribers of each provider on that property to the total number of subscribers on that property. In determining the pro rata amount of reimbursement by any alternative provider, the cost of equipment and installation must be reduced to the extent of cumulative depreciation of that equipment at the time the alternative provider begins providing service.

(b) If equipment is already installed as of June 15, 1983, with channel capacity sufficient to allow access to alternative providers, the access and pro rata reimbursement provisions of paragraph (a) apply.



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M.S.A. § 238.241

Minnesota Statutes Annotated

Telecommunications (Ch. 237, 238)

Chapter 238. Cable Communications

**238.241. Conditions for access by alternative provider**

**Subdivision 1. Channel capacity.** Cable systems granted access to a multiple dwelling complex under section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

**Subd. 2. Technical plan approval.** The cable communications system shall determine the technical plan best suited for providing the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under section 238.24, subdivision 8.

**Subd. 3. Duplicate connections.** The cable communications system is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the system may provide duplicate connections at its discretion.

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M.S.A. § 238.242

Minnesota Statutes Annotated

Telecommunications (Ch. 237, 238)

Chapter 238. Cable Communications

**238.242. Reimbursement**

**Subdivision 1. Providing alternative service.** Other providers of television programming or cable communications services shall notify the person operating a cable communications system when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by this section or section 238.241. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications system shall make available the equipment necessary to provide the alternative service without unreasonable delay.

**Subd. 2. Reimbursement determination.** The amount to be reimbursed must be determined under section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

**Subd. 3. Financial records made available.** The person operating a cable communications system, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.